

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

LEVI HOLLOWAY, JR.,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:10CV002-P-A

HORSESHOE CASINO,

DEFENDANT.

FINAL JUDGMENT

This matter comes before the court upon the defendant's April 29, 2010 motion to dismiss [8] for insufficiency of process, insufficiency of service, and lack of personal jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(2), (4), and (5) respectively. After due consideration of the motion, the court finds as follows, to-wit:

The defendant filed this motion to dismiss on April 29, 2010. The plaintiff's deadline to respond passed on May 17, 2010. Approximately five months have passed and the plaintiff has not responded, nor has he otherwise contacted the court for additional time to do so. Accordingly, the court concludes that this matter should be dismissed without prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). A district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute, even though Rule 41(b) only provides for such dismissal on a defendant's motion. *Link v. Wabash*, 370 U.S. 626, 629-30 (1962); *Colle v. Brazos County, Tex.*, 981 F.2d 237, 242-3 (5th Cir. 1993).

IT IS THEREFORE ORDERED AND ADJUDGED that:

- (1) The defendant's April 29, 2010 motion to dismiss [8] is **GRANTED** insofar as this matter is to be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) rather than Rule 12;
- (2) The plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**; and

(3) This case is **CLOSED** with the parties to bear their own costs.

SO ORDERED this the 28th day of September, A.D., 2010.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE